

FILE COPY

STATE OF WISCONSIN  
BEFORE THE DENTISTRY EXAMINING BOARD

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IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	FINAL DECISION AND ORDER
MERLIN HENKEL, D.D.S.,	:	92 DEN 128
RESPONDENT.	:	

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The parties to this action for the purposes of Wis. Stats. sec. 227.53 are:

Merlin Henkel, D.D.S.  
2701 Marshall Court  
Madison, WI 53705

Wisconsin Dentistry Examining Board  
P.O. Box 8935  
Madison, WI 53708-8935

Department of Regulation and Licensing  
Division of Enforcement  
P.O. Box 8935  
Madison, WI 53708-8935

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision of this matter, subject to the approval of the Board. The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Merlin Henkel (D.O.B. 2/06/36) is duly licensed in the state of Wisconsin as a dentist (license # 4001483). This license was first granted on June 27, 1959.
2. Respondent's latest address on file with the Department of Regulation and Licensing is 2701 Marshall Court, Madison, WI 53705.
3. Periodontic treatment concerns the supporting structures of the teeth including gum tissue, periodontal ligament and cementum.

4. If plaque is not effectively removed from a tooth, inflammation of the soft tissue surrounding the tooth (gingivitis) may occur within 21 days. If unattended, disease may spread to the bone tissue within 90 days (periodontitis). Bacteria, endotoxins and acids may build which may destroy the bone and surrounding tissues.

5. Chronic adult periodontitis may result in bone loss at the approximate rate of a millimeter per year.

6. Respondent rendered general dental services to patient PM for a period extending from 1964 to November 28, 1990. The patient record for PM first indicates evidence of periodontal "pocketing" discovered during an examination at Respondent's office April 24, 1979.

7. Thereafter, notations were made in the patient record of PM concerning her periodontal condition as follows:

- 10/14/81 talked about pockets, sulcular pockets noted on chart;  
( the chart corresponding to the entry contains the following notations above tooth numbers: #3 - 6mm; #6 - 6mm; #9 - 9mm; #11 - 8mm; #12 - 6mm; #18 - 9mm; #24 - 8mm; #26 - 8mm );
- 02/19/82 plaque control fair-good, some plaque in pockets and mand. ant. lig.;
- 10/13/82 plaque control very good, many pockets but very little bleeding;
- 01/28/83 gave and rec. proxy-brush for M# 18, D# 21, much bleeding from pockets today;
- 05/25/83 ... pocket depth same as '81, suggest salt water in Water Pic at low setting;
- 09/28/83 pockets unchanged;
- 01/25/84 mild root planing throughout, suggest baking soda and peroxide and Water Pic with salt;
- 05/02/84 not using baking soda at home, pockets unchanged;
- 10/03/84 no inflammation or bleeding, pockets unchanged-stable;
- 02/11/85 3 sore pockets above # 3-4, no exudate, took PA;
- 10/22/85 pocketing and bleeding, go back to baking soda, but 4-6mm hard to maintain;

02/20/86 bleeding #3 and #14 areas;

12/15/88 #3 M-7mm, D-6mm;

05/31/89 #9 M-7mm, #18 B-6mm, M-7mm, #3 M-7mm, D-6mm;

12/06/89 pocket measurements same as 5/31/89;

05/16/90 pockets same.

8. Patient PM has stated that Respondent never indicated that a serious periodontal condition existed, and never suggested that PM seek advice or treatment from a periodontist.

9. On January 21, 1991, PM was seen by a periodontist who diagnosed severe periodontal disease involving teeth number 3, 9, 11, 12, 14, 18, 20, 24 and 26; and moderate periodontal disease involving teeth number 5, 6, 7, 10, 22, 23, 25, 27, 29 and 30.

10. As a result of periodontal disease, teeth number 3 and 12 of patient PM were extracted, and oral surgery was performed to remove granulation tissue and readapt gum tissue to bone.

11. Thereafter, removal of tooth number 18, and further treatment of tooth number 24 was necessitated by recurrence of periodontal infection.

12. In his treatment of patient PM, Respondent failed to recognize the severity of the periodontal condition, failed to fully document the patient's status, and failed to appropriately treat the periodontal disease, or refer the patient to a specialist for treatment.

#### CONCLUSIONS OF LAW

By the conduct described above, Respondent is subject to disciplinary action against his license to practice as a dentist in the state of Wisconsin, pursuant to Wis. Stats. sec. 447.07(3)(a) and (h), and Wis. Adm. Code sec. DE 5.02(5).

#### ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. The stipulation of the parties is accepted.

2. Merlin Henkel is hereby REPRIMANDED for his unprofessional conduct in this matter.

3. The license of Respondent is hereby LIMITED in that Respondent shall not engage in periodontic practice until he has submitted to the Board certification of successful completion of a course of education and training of not less than 30 hours in periodontics, which shall include both didactic and clinical instruction.

The course outline must be pre-approved by the Board no later than two months after the date of this Order. No outline will be approved unless the Respondent submits the name of the institution offering the instruction, the name of the instructor, and the content of the course. Respondent shall submit certification of successful completion of the approved course of study to the Board within six months of the date of this Order. Upon filing of the appropriate certification, the limitation shall be removed without further Board action. No continuing education credit may be claimed for this required training.

4. Respondent shall pay COSTS of investigation and prosecution of this action in the sum of \$ 500.00 to the Department of Regulation and Licensing within sixty days of the date of this Order.

The rights of a party aggrieved by this Decision to petition the Board for rehearing and to petition for judicial review are set forth on the attached "Notice of Appeal Information."

This Order shall become effective upon the date of its signing.

WISCONSIN DENTISTRY EXAMINING BOARD

By: Thomas L. Brandt DDS 11-3-93  
Chair Date

jwh

STATE OF WISCONSIN  
BEFORE THE DENTISTRY EXAMINING BOARD

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IN THE MATTER OF	:	
DISCIPLINARY PROCEEDINGS AGAINST	:	STIPULATION
MERLIN HENKEL, D.D.S.,	:	92 DEN 128
RESPONDENT	:	

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It is hereby stipulated between Merlin Henkel, personally on his own behalf and James W. Harris, Attorney for the Department of Regulation and Licensing, Division of Enforcement, as follows that:

1. This Stipulation is entered into as a result of a pending investigation of Respondent's licensure by the Division of Enforcement. Respondent consents to the resolution of this investigation by stipulation and without the issuance of a formal complaint.

2. Respondent understands that by the signing of this Stipulation he voluntarily and knowingly waives his rights, including: the right to a hearing on the allegations against him, at which time the state has the burden of proving those allegations by a preponderance of the evidence; the right to confront and cross-examine the witnesses against him; the right to call witnesses on his behalf and to compel their attendance by subpoena; the right to testify himself; the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision; the right to petition for rehearing; and all other applicable rights afforded to him under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, and the Wisconsin Administrative Code.

3. Respondent is aware of his right to seek legal representation and has been provided the opportunity to seek legal advice prior to signing this stipulation.

4. Respondent agrees to the adoption of the attached Final Decision and Order by the Wisconsin Dentistry Examining Board. The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondent waives all rights to any appeal of the Board's order, if adopted in the form as attached.

5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall be returned to the Division of Enforcement for further proceedings. In the event that this Stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by the consideration of this attempted resolution.

6. Attached to this Stipulation is the current licensure card of Respondent. If the Board accepts the Stipulation, Respondent's license shall be reissued in accordance with the terms of the attached Final Decision and Order. If the Board does not accept this Stipulation, the license of Respondent shall be returned to him with a notice of the Board's decision not to accept the Stipulation.

7. The parties to this stipulation agree that the attorney for the Division of Enforcement may appear before the Wisconsin Dentistry Examining Board for the purposes of speaking in support of this agreement and answering questions that the members of the Board may have in connection with their deliberations on the stipulation.

8. The Division of Enforcement joins Respondent in recommending the Wisconsin Dentistry Examining Board adopt this Stipulation and issue the attached Final Decision and Order.

M. F. Henkel #125  
Merlin Henkel, D.D.S.

9-9-93  
Date

James W. Harris  
James W. Harris, Attorney  
Division of Enforcement

9/13/93  
Date

jwh

## **NOTICE OF APPEAL INFORMATION**

**(Notice of Rights for Rehearing or Judicial Review,  
the times allowed for each, and the identification  
of the party to be named as respondent)**

**The following notice is served on you as part of the final decision:**

### **1. Rehearing.**

**Any person aggrieved by this order may petition for a rehearing within 20 days of the service of this decision, as provided in section 227.49 of the Wisconsin Statutes, a copy of which is attached. The 20 day period commences the day after personal service or mailing of this decision. (The date of mailing of this decision is shown below.) The petition for rehearing should be filed with the State of Wisconsin Dentistry Examining Board.**

**A petition for rehearing is not a prerequisite for appeal directly to circuit court through a petition for judicial review.**

### **2. Judicial Review.**

**Any person aggrieved by this decision has a right to petition for judicial review of this decision as provided in section 227.53 of the Wisconsin Statutes, a copy of which is attached. The petition should be filed in circuit court and served upon the State of Wisconsin Dentistry Examining Board**

**within 30 days of service of this decision if there has been no petition for rehearing, or within 30 days of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.**

**The 30 day period commences the day after personal service or mailing of the decision or order, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing of this decision is shown below.) A petition for judicial review should be served upon, and name as the respondent, the following: the State of Wisconsin Dentistry Examining Board.**

**The date of mailing of this decision is November 5, 1993.**